out proof of special damages. But in order to do this courts have been forced to classify the wrong as *libel* instead of *slander*. Thus, in *Sorensen* v. *Wood, et al.*, 123 Neb. 345, 82 A.L.R. 1098 (1932), radio station KFAB was held liable for defamation delivered orally over the air without proof of special damages. For a general discussion of the problem, and criticism of this case see J. E. Royce, "Defamation via Radio," 1 Ohio St. L.J. 180. *Miles* v. *Wasmer*, 172 Wash. 466 (1933), another radio case, did not rule as to whether the injury was libel or slander. But the legislature of Washington in 1935 enacted that: "Every malicious publication by writing * * * radio broadcasting, or which shall * * * transmit the human voice or reproduce the same from records or other appliances or means * * * shall be libel." Wash. Crim. Laws, Ch. 117, sec. 2424. This obviously includes phonograph and dictaphone records, talking pictures, etc.

There seem to be only three cases involving defamation by motion pictures. The action was obviously libel in *Merle* v. *Sociological Research Film Corp.*, 152 N.Y.S. 829 (1915) where a silent film was in dispute. But *talking* pictures gave rise to the same action in *Brown* v. *Paramount Public. Corp.*, 270 N.Y.S. 544 (1934), which involved an imputation of immorality in the picture "An American Tragedy." An English case, *Yousoupoff* v. *M. G. M. Pictures, Ltd.*, reported in the *N. Y. Times* on March 6, 1934, expressly held the action to be libel instead of slander. A large verdict of £25,000 was awarded in this case, which arose from certain imputations, made orally, in "Rasputin and the Empress."

LYLE E. TREADWAY

DIVORCE

DOMESTIC RELATIONS — RECOGNITION OF FOREIGN DECREES OF DIVORCE WHERE DOMICILIARY REQUIREMENT IS SHORT OR ABSENT

Of all divorce problems, that of the divorce obtained in a sister state or foreign country is one of the most complex. This fact is due to the great diversity of "residence" requirements. The following are the "residence" requriements of the jurisdictions under discussion: Nevada, six weeks;[1] Idaho, ninety days;[2] Arkansas, three months;[3] Florida, three months;[4] Mexico, no residence whatsoever, and a divorce may be

[1] Nev. Sess. Laws, 1931, Chap. 97.
[2] Idaho Gen. Code, 31-701, 1932.
[3] Ark. Sess. Laws, 1931, Chap. 71.
[4] Laws of Fla., 1935, p. 444.

obtained by an alien simply by employing counsel to obtain the decree;[5] France, no specific length of residence, but both parties must be residents (residence in France does not mean domicile) although it is possible to serve notice on the defendant's counsel by special arrangement by the defendant before leaving France.[6] The statutes in the above American jurisdictions use the term "residence" for domicile and the courts of these jurisdictions say that there must be a domicile by the petitioner before a divorce is valid.

From the short residence requirements of these few jurisdictions it seems clear that they are not insisting upon the establishment of a bona fide domicile in any true sense in order to give their courts jurisdiction for the purpose of granting divorces. When a petitioner goes to one of these states, he or she has but two thoughts in mind and they are to obtain a divorce in the shortest possible time, and to avoid the stricter laws of the home state. Where the decrees have been attacked by courts of the matrimonial domicile, the petitioner has frequently been found to have left the state where the divorce has been obtained soon after it was granted and to have returned to the matrimonial domicile, which shows that the petitioner went to the other jurisdiction for the purpose of obtaining a divorce and not to establish a domicile of more or less permanence.

The state has an interest in marriage as a public institution; and public policy requires that the marriage be preserved in all cases where the purpose of marriage is not defeated. The grounds of divorce provided in the statutes are indicative of the policy which the various states have had in this matter. The interpretation of these statutes by the courts, whether liberal or narrow, likewise indicates the local policy. If the citizens of any state are permitted to go into another state where the rules of divorce are less stringent to obtain a divorce and then return to the state of their matrimonial domicile and have this foreign decree fully recognized, it will tend to break down the policies of the state of the matrimonial domicile. Therefore, in some cases it is necessary, because of public policy, to deny recognition of the divorce decrees here under discussion. But the several states are bound by Art. IV, Sec. 1 of the United States Constitution which provides, "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." One state, however, is not bound by this section of the constitution to recognize a judicial proceeding in another state unless that court had jurisdiction of the cause.[7]

[5] 15 Am. Bar Assn. Jr. 709 (1929).

[6] French Code of Civil Procedure, Art. 59; Art. 875, *Ibid;* Art. 14, Civil Code; Art. 15, Civil Code.

[7] *Bell* v. *U.S.,* 181 U.S. 175, 45 L. Ed. 804 (1901); *Reed* v. *Reed,* 52 Mich. 117, 50 Am. Rep. 247 (1883); *Field* v. *Field,* 215 Ill. 496, 74 N.E. 413 (1905).

In this country, it is established by the great weight of authority that the jurisdiction of the cause is dependent upon whether the petitioner has established a bona fide domicile within the state of the forum where he seeks a divorce. Domicile is that place in which a person has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with present intention of making a permanent home until some unexpected event shall occur and induce him to adopt some other permanent home.[8] Normally a wife's domicile is that of her husband, but she may establish a separate domicile, if she chooses, whenever she has grounds for divorce or a valid reason for leaving her husband.[9] A residence is generally transient in its nature. It becomes a domicile when it is taken up *animo manendi*.[10]

The majority of the state courts, including Ohio, require only that the petitioner be domiciled within the state of the forum, and they permit the defendant to be served with notice by means of publication.[11] New York will recognize a foreign decree under the following circumstances: (1) When the decree was obtained at the last matrimonial domicile; (2) if the defendant in a divorce proceeding was domiciled in a foreign state and that state would recognize the decree; or (3) where the petitioner or someone claiming under him attempts to attack the decree.[12] In some recent cases the New York court has held that appearance by the defendant will eliminate any objection to a decree rendered where only one party is domiciled.[13]

It is desirable to deal with the cases pertaining to divorces obtained in sister states separately from those obtained in foreign countries. It has been repeatedly held that a decree rendered where neither party is domiciled is not entitled to extraterritorial recognition either by "full faith and credit" or by "comity."[14] A domicile which is "colorable,"

[8] *Di Brigide* v. *Di Brigide*, 116 N.J. Eq. 208, 172 Atl. 505 (1934); *Cochran* v. *Cochran*, 173 Ga. 856, 162 S.E. 99 (1932).

[9] *Burtis* v. *Burtis*, 161 Mass. 508, 37 N. E. 740 (1894).

[10] *In Matter of Newcomb*, 192 N.Y. 238, 84 N.E. 950 (1908); *Cohen* v. *Daniels*, 25 Iowa 88, 13 L.R.A. 786 (1868).

[11] *Spaulding* v. *Spaulding*, 11 Ohio App. 143, 30 Ohio C.A. 475 (1919); *Daerr* v. *Forsythe*, 50 Ohio St. 726, 35 N.E. 1055 (1893); *Crimm* v. *Crimm*, 211 Ala. 13, 99 So. 301 (1924); *Holdrof* v. *Holdrof*, 198 Iowa 158, 197 N.W. 910 (1924).

The United States Supreme Court held in *Atherton* v. *Atherton*, 181 U.S. 155, 21 Sup. Ct. Rep. 544 (1901), that a decree obtained at the matrimonial domicile where service was had by publication on the wife who had moved to New York, was entitled to "full faith and credit." The same court also held, in *Haddock* v. *Haddock*, 201 U.S. 562, 26 Sup. Ct. Rep. 525 (1906), that a divorce obtained by the husband who was domiciled in Connecticut which was not the matrimonial domicile, and where the wife was domiciled in New York and was only constructively served, did not come within the "full faith and credit" clause.

[12] 11 Corn. L.Q. 141 (1925).

[13] *Rupp* v. *Rupp*, 156 App. Div. 389, 141 N.Y.S. 484 (1913); *Richards* v. *Richards*, 87 Misc. Rep. 134, 149 N.Y.S. 1028 (1914).

[14] *Bell* v. *U.S.*, *supra*, note 7; *Reed* v. *Reed*, *supra*, note 7; *Van Fossen* v. *State*, 37 Ohio St. 317, 41 Am. Rep. 507 (1881); 9 R.C.L. sec. 338.

that is, for purpose of divorce only, confers no jurisdiction upon the local court to grant a divorce which will have any extraterritorial validity.[15] And if there is no intention of establishing a domicile in the sister state, a divorce decree of that state is a nullity.[16] Motive may also be important in determining whether a bona fide domicile has been established.[17] The motive is to be considered in deciding whether the intent to establish a bona fide domicile is genuine.[18]

Mere residence within the state of the forum is not enough to confer jurisdiction upon the local court.[19] Nor will the fact that both parties have appeared in the divorce action entitle the decree to extraterritorial recognition if there was no domiciliary jurisdiction.[20] But this situation must be distinguished from that where one party has established a domicile and there is a cross-bill by defendant, who has no domicile within the jurisdiction. Such decrees in favor of cross-petitioner are usually recognized.[21]

In so far as divorces obtained in the United States are concerned, it may be concluded that there are two necessary requirements in establishing a bona fide domicile: (1) intent to establish a domicile, which may be shown by the motive of the petitioner; (2) physical presence within the jurisdiction where the domicile is being established.

To obtain a valid divorce in a foreign country, that court must also have jurisdiction of the cause before the rule of "comity" will be exercised. There must be physical presence of the plaintiff to entitle the decree to recognition in this country on the basis of comity. The intent to establish a bona fide domicile is also necessary to give the court of a foreign country jurisdiction before the courts of the several states will recognize the decree. Because of the lack of the above requisites, Mex-

[15] *Gildersleeve* v. *Gildersleeve*, 88 Conn. 689, 92 Atl. 684 (1914); *Cochran* v. *Cochran*, *supra*; *Broder* v. *Broder*, 122 Cal. App. 296, 10 Pac. (2d) 1932.

[16] *State* v. *Cooke*, 110 Conn. 348, 148 Atl. 385 (1930); *Jones* v. *Jones*, 17 Ohio N.P. (N.S.) 456, 28 Ohio D. N.P. 644 (1915); *Lister* v. *Lister*, 86 N.J. Eq. 30, 97 Atl. 170 (1915); *Reik* v. *Reik*, 109 N.J. Eq. 615, 158 Atl. 519 (1932).

[17] *Morris* v. *Gilmer*, 129 U.S. 315, 9 Sup. Ct. Rep. 289 (1889); *Plant* v. *Harrison*, 36 Mis. Rep. 649, 74 N.Y.S. 411 (1902).

[18] *Brugiere* v. *Brugiere*, 172 Cal. 199, 155 Pac. 988 (1916); *Di Brigide* v. *Di Brigide*, *supra*, note 8; *Jones* v. *Jones*, *supra*, note 16; *Snyder* v. *Buckeye State Bldg. and Loan Co.*, 26 Ohio App. 166, 160 N.E. 37 (1927); *Morey* v. *Morey*, 27 Minn. 265, 6 N.W. 783 (1880); *Williams* v. *Osenton*, 232 U.S. 619, 34 Sup. Ct. Rep. 442 (1913); *Morris* v. *Gilmer*, *supra*, note 17.

[19] *Gildersleeve* v. *Gildersleeve*, *supra*, note 15; *Larrick* v. *Walters*, 39 Ohio App. 363, 177 N.E. 642 (1930); *Brugiere* v. *Brugiere*, *supra*, note 18; *Cochran* v. *Cochran*, *supra*, note 8.

[20] *Andrews* v. *Andrews*, 188 U.S. 14, 23 Sup. Ct. Rep. 237 (1902); *Lister* v. *Lister*, *supra*, note 16; see 21 Minn. L.R. 599 for discussion of *Estoppel to Attack Void Divorce, for Lack of Juridiction—Appearance.*

[21] *Jenness* v. *Jenness*, 24 Ind. 355, 87 Am. Dec. 235 (1865); *Clutton* v. *Clutton*, 108 Mich. 267, 66 N.W. 52 (1896); *Contra*, *Valk* v. *Valk*, 18 R.I. 639, 29 Atl. 499 (1894).

ican divorces are seldom recognized in the United States.[22] But if the petitioner should establish a bona fide domicile in Mexico these decrees would probably be recognized by our state courts. Nor can the parties, by consent, confer jurisdiction upon the Mexican court if neither is domiciled there.[23] But the New York court has held that,[24] when the wife, domiciled in New York, had applied through her counsel for a divorce in Mexico and the husband, also domiciled in New York, had employed counsel to contest the Mexican proceedings and a divorce was granted, the husband was estopped from attacking the decree. This case has probably been overruled.[25] In the *Alzmann* v. *Moher*[25a] case it was held that although the husband, who was domiciled in New York, had defended by means of counsel a divorce action being brought in Mexico by his wife who was domiciled in New York, he could not later obtain a marriage license in New York because the Mexican decree was invalid.

Under the laws of divorce in France, it is necessary that the plaintiff be a resident there and the defendant must either be a resident at the time of the granting of the divorce or employ counsel before leaving the country, so that there may be counsel to defend the case. There is only one reported case in which a French divorce has been attacked in the United States.[26] In this case the parties had their matrimonial domicile in New York, but had lived in France for some time. The husband was granted a divorce in France and then the wife returned to New York to seek a divorce. It was denied because the wife had submitted to the jurisdiction of the French court, and was estopped from attacking the decree.

One may conclude from the foregoing discussion that in order to have a divorce decree of a foreign state or country recognized in the forum of the matrimonial domicile, that court must have obtained jurisdiction of the cause. Jurisdiction, in turn, depends upon the establish-

[22] *Bergeron* v. *Bergeron*, 287 Mass. 524, 192 N.E. 86 (1934); *Greenburg* v. *Greenburg*, 218 App. Div. 104, 218 N.Y.S. 87 (1926); *Bauman* v. *Bauman*, 250 N.Y. 382, 105 N.E. 819 (1929); *Alzmann* v. *Moher*, 231 App. Div. 139, 246 N.Y.S. 60 (1930); *Commonwealth* v. *Monzi*, 120 Pa. Super. 360, 182 Atl. 795 (1935); *Ryder* v. *Ryder*, 2 Cal. App. (2d) 426, 37 Pac. (2d) 1069 (1934).

[23] *Bonner* v. *Reondrew*, 203 Iowa 1355, 214 N.W. 536 (1927).

[24] *Webber* v. *Webber*, 135 Mis. Rep. 717, 238 N.Y.S. 333 (1929).

[25] *Alzmann* v. *Moher*, *supra*, note 22; *Kegley* v. *Kegley*, 16 Cal. App. (2d) 383, 60 Pac. (2d) 482 (1936). The California court held that the divorce obtained in Mexico was invalid although the defendant in that action had filed a confession of judgment. The defendant in the Mexican divorce was not estopped later from seeking a divorce in California.

[25a] *Supra*, note 22.

[26] *Gould* v. *Gould*, 235 N.Y. 14, 138 N.E. 490 (1923); *Schneider* v. *Schneider*, 232 App. Div. 71, 249 N.Y.S. 131 (1931). Husband who was resident of France obtained a divorce there and the wife appeared and submitted to jurisdiction. New York court refused to grant a declaratory judgment that she was the lawful wife of defendant who had remarried in United States.

ment by the petitioner of a *bona fide* domicile. A *bona fide* domicile is composed of two requisites: (1) intent, and (2) physical presence. Apart from special requirements such as exist in New York and a few other states, the majority of the courts would recognize a foreign decree if the above requirements are established. The states requiring such requisites have accomplished the purpose of protecting the marital status of their citizens. This seems to be a desirable limitation on the recognition of foreign divorce decrees.

R. W. VANDEMARK

EQUITY

JURISDICTION OF EQUITY TO ENJOIN CITIZENS SUING IN A FOREIGN COUNTRY

Labak and Grazner were residents of Canton, Ohio. On January 19, 1935, Labak instituted a suit in Czechoslovakia upon a grocery account alleged due from Grazner and three others. Joseph Grazner had been discharged in bankruptcy and the account had been listed as a claim against his estate. This was admitted by demurrer as was the fact that the other plaintiffs named in the Labak suit had never contracted for the debt upon which they were being sued. The plaintiff sought to enjoin further proceedings by the defendant in Czechoslovakia. The demurrer by the defendant was overruled. The trial court issued an injunction, which decree was affirmed by the court of appeals. *Labak* v. *Grazner, et al.*, 23 Ohio Abs. 57, 6 N.E. (2nd) 790 (1937).

In transitory actions, the law gives a party the right to bring the action in any court that acquires jurisdiction; and based on the assumption that the foreign court can do full and complete justice, it is not inequitable for one to choose to litigate his claim in a forum that will be more favorable to him. *Royal League* v. *Kavanaugh*, 233 Ill. 175, 134 Ill. App. 75, 84 N.E. 178 (1908); *Carson* v. *Dunham*, 149 Mass. 52, 14 Am. St. Rep. 397, 20 N.E. 312 (1889); *Thorndike* v. *Thorndike*, 142 Ill. 450, 32 N.E. 510, 21 L.R.A. 71 (1892); *Edgell* v. *Clark*, 45 N.Y. Supp. 979 (1897); *Delaware R. & W. R. Co.* v. *Ashelman*, 300 Pa. 291, 150 Atl. 475, 69 L.R.A. 588 (1930); *Fed. Trust Co.* v. *Conklin*, 87 N.J. Eq. 185, 99 Atl. 109 (1916). Whereever the parties are residents, however, the court, having authority to issue its decree in personam, may, in a proper case, enjoin those within its jurisdiction from prosecuting a suit in another state; and such decree is not an interference with the proceedings of a foreign court. Chaffee and Simpson, *Cases on Equity*, 1934, vol. I, p. 164; *Gordon* v. *Munn*,